

Yackulic, Ted

From: Feldman, Stephen (Perkins Coie) <SFeldman@perkinscoie.com>
Sent: Tuesday, February 04, 2014 11:06 AM
To: Frederick.Phillips@USDOJ.GOV; Yackulic, Ted
Cc: 'jleonard@ml-llp.com'; shawn@sryanlaw.com
Subject: RE: Escrow Agreement
Attachments: EPA SA Lombard revs to Absorbent_Tech_draft_SA 1 31 11.doc

All,

Attached is what I hope to be the final version of the settlement agreement. This version incorporates all of the changes proposed by Fred this morning. The minor additional proposed changes appear in redline. And, as you will see, those changes, consist of the following:

1. The inclusion of a sentence in Paragraph 11 to address the “release or” issue that is the subject of the emails below;
2. The inclusion of the \$230,000 figure for the Ferry Property in Paragraph 13;
3. Tweaking of the language in Paragraph 14 to reflect the fact that the sale of the Queen Property has not yet occurred; and
4. Two grammatical changes in Paragraph 16.

Please confirm as soon as possible that you are all OK with these changes.

Thanks,
Stephen

From: Phillips, Frederick (ENRD) [mailto:Frederick.Phillips@usdoj.gov]
Sent: Tuesday, February 04, 2014 10:55 AM
To: Feldman, Stephen (Perkins Coie); 'Yackulic, Ted'; 'tyackulic@gmail.com'
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

Stephen – that’s fine. ““Release or threatened release” within the meaning of 42 USC 9601(22).” Something like that should do it.

FSP

From: Feldman, Stephen (Perkins Coie) [mailto:SFeldman@perkinscoie.com]
Sent: Tuesday, February 04, 2014 1:19 PM

To: Phillips, Frederick (ENRD); 'Yackulic, Ted'; 'tyackulic@gmail.com'
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

Fred,

I just took a look at your comments.

I am fine with your revision to paragraph 37.

Regarding paragraphs 4 and 11, my suggested resolution is to keep in the phrase “release or,” as you have proposed, but also include a specific reference to the statutory section that you have cited. I will circulate some proposed language for your consideration.

Thanks,
Stephen

From: Feldman, Stephen (Perkins Coie)
Sent: Tuesday, February 04, 2014 9:56 AM
To: 'Phillips, Frederick (ENRD)'; 'Yackulic, Ted'; 'tyackulic@gmail.com'
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

Thanks, Fred. I will review the proposed revisions, but I just had a brief conversation with Ted so I have an idea of what they are. Regarding the striking of the term “release” and leaving only the term “threatened release,” I explained to Ted why I think that that change is both accurate and important. I would welcome the chance to discuss that issue with you as well.

I will defer to Justin regarding the value of the assets and liabilities of the estate, but as to the value of the personal property transferred to the Queen Ave owners, I can tell you that that property likely has a negative value, given that the expense associated with disassembling, removing, and disposing of the personal property will likely exceed the proceeds of any sale or other disposition of the property.

From: Phillips, Frederick (ENRD) [<mailto:Frederick.Phillips@usdoj.gov>]
Sent: Tuesday, February 04, 2014 9:45 AM
To: Feldman, Stephen (Perkins Coie); 'Yackulic, Ted'; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

I'm attaching the SA with very minor revisions at paragraphs 4, 11, and 37. With that, I think we're done and prepared to recommend approval by those with authority to bind the US.

In support of final approval we're going to need some current statement of the assets and liabilities of the estate and at least an estimate of the value of the personal property transferred to Queen Ave owners.

Thanks very much.

Frederick S. Phillips
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
(202) 305-0439
frederick.phillips@usdoj.gov

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Washington, D.C. 20044-7611

Overnite/ 601 D. St., NW
Courier: Washington, D.C. 20004

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Tuesday, February 04, 2014 12:33 PM
To: 'Yackulic, Ted'; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Phillips, Frederick (ENRD)
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

Thanks, Ted.

We look forward to EPA's comments.

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]
Sent: Tuesday, February 04, 2014 9:27 AM
To: Feldman, Stephen (Perkins Coie); 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

Steve,

I forwarded my comments to Fred and hope to talk with him before I get on a plane. He will forward our comments today. The Settlement Agreement has not been reviewed by my management but I will recommend it to my management after we've worked through the issues. I'm available by cell 206 371 2170 and email until I get back to the office on Friday. Thanks.

Ted

From: Feldman, Stephen (Perkins Coie) <SFeldman@perkinscoie.com>

Sent: Monday, February 03, 2014 3:51 PM

To: Yackulic, Ted; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV

Cc: 'jleonard@ml-llp.com'

Subject: RE: Escrow Agreement

Ted,

Although we believe that the recording fee is an expense that properly should be incurred by EPA, the Seller is willing to pay it.

It is critical that we finalize and execute the settlement agreement as soon as possible. Thus, can you and Fred please let us know if EPA has any issues with the version that I circulated earlier today.

Thanks,
Stephen

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]

Sent: Monday, February 03, 2014 3:14 PM

To: Yackulic, Ted; Feldman, Stephen (Perkins Coie); 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV

Cc: 'jleonard@ml-llp.com'

Subject: RE: Escrow Agreement

Attached is a copy of a letter transmitting EPA's request that Chicago Title record the lien release. We appreciate the seller and/or buying assuming the cost of the recording.

From: Yackulic, Ted

Sent: Monday, February 03, 2014 11:39 AM

To: 'Feldman, Stephen (Perkins Coie)'; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV

Cc: 'jleonard@ml-llp.com'

Subject: RE: Escrow Agreement

I'm not sure I can make that commitment. If you want EPA to pay, we may need to wait for the person with the authority to write to get back in the office.

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Monday, February 03, 2014 11:37 AM
To: Yackulic, Ted; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

I believe that that is essentially it (i.e., a letter requesting Chicago Title to file the lien release).

Kelly, can you please confirm, and please also let Ted know if there is any special language you need in the letter?

Ted, I assume that EPA also will need to pay for (or reimburse Chicago Title for) the filing fee.

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]
Sent: Monday, February 03, 2014 11:32 AM
To: Feldman, Stephen (Perkins Coie); 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

By instructions do you mean a letter requesting that Chicago Title file the lien release? Not a problem. I could the release form to

Kelly M. Norton
Senior Escrow Officer/Commercial Division
Chicago Title Company
1211 SW Fifth Avenue, Suite 2130
Portland, OR 97204

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Monday, February 03, 2014 11:29 AM
To: Yackulic, Ted; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

That timing will likely be a problem, as I know the hope and intent is to close by no later than Wednesday of this week.

I believe that Chicago Title can handle the recording, but I believe that that will require you sending the original lien release (ASAP) and providing appropriate instructions to Chicago Title. Is that correct, Kelly?

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]
Sent: Monday, February 03, 2014 11:25 AM
To: Feldman, Stephen (Perkins Coie); 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV

Cc: 'jleonard@ml-llp.com'
Subject: RE: Escrow Agreement

We can record the release. However, the person who files and pays the filing fee is out until Wednesday and starting tomorrow I'm on travel until Thursday night. So, it may take us until early next week to file the original. Does that work?

Ted Yackulic, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Phone: 206-553-1218
yackulic.ted@epa.gov

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Monday, February 03, 2014 9:02 AM
To: Yackulic, Ted; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: Re: Escrow Agreement

Ted,

Yes, we will make sure that you get whatever documentation can be provided regarding the creation of the escrow account.

In the meantime, I understand from Chicago Title that the lien release needs to be recorded (just like the lien itself was recorded). Even with the signed release, the sale will not be able to close without the lien release being officially recorded. I trust that EPA can handle the recording, but please confirm. Please also let us know when we can expect the lien release to be recorded.

Thanks,
Stephen

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]
Sent: Monday, February 03, 2014 08:53 AM Pacific Standard Time
To: Feldman, Stephen (Perkins Coie); 'tyackulic@gmail.com' <tyackulic@gmail.com>; 'Kelly.Norton@ctt.com' <Kelly.Norton@ctt.com>; Frederick.Phillips@USDOJ.GOV <Frederick.Phillips@USDOJ.GOV>
Cc: 'jleonard@ml-llp.com' <jleonard@ml-llp.com>
Subject: RE: Escrow Agreement

Can you send me documentation of the account after it is created? Thanks.

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Monday, February 03, 2014 8:49 AM
To: Yackulic, Ted; 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: Re: Escrow Agreement

Thanks, Ted.

Kelly, please let Ted know if anything else is required on the part of EPA.

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]
Sent: Monday, February 03, 2014 08:45 AM Pacific Standard Time
To: Feldman, Stephen (Perkins Coie); 'tyackulic@gmail.com' <tyackulic@gmail.com>; 'Kelly.Norton@ctt.com' <Kelly.Norton@ctt.com>; Frederick.Phillips@USDOJ.GOV <Frederick.Phillips@USDOJ.GOV>
Cc: 'jleonard@ml-llp.com' <jleonard@ml-llp.com>
Subject: RE: Escrow Agreement

Steve and Kelly,

Here is a signed copy of the lien release. If you need the original let me know where to mail it. We will send it by overnight mail.

Ted Yackulic, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Phone: 206-553-1218
yackulic.ted@epa.gov

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Sunday, February 02, 2014 3:31 PM
To: 'tyackulic@gmail.com'; 'Kelly.Norton@ctt.com'; Yackulic, Ted; Frederick.Phillips@USDOJ.GOV
Cc: 'jleonard@ml-llp.com'
Subject: Re: Escrow Agreement

Kelly?

From: Ted Yackulic [<mailto:yackulic.ted@epa.gov>]
Sent: Sunday, February 02, 2014 03:29 PM Pacific Standard Time
To: Feldman, Stephen (Perkins Coie); 'Norton, Kelly' <Kelly.Norton@ctt.com>; 'Yackulic, Ted' <yackulic.ted@epa.gov>; Frederick.Phillips@USDOJ.GOV

<Frederick.Phillips@USDOJ.GOV>

Cc: Justin D. Leonard (jleonard@ml-llp.com) <jleonard@ml-llp.com>

Subject: RE: Escrow Agreement

Will a scanned version do

Ted Yackulic

From: [Feldman, Stephen \(Perkins Coie\)](#)

Sent: 2/2/2014 1:22 PM

To: '[Norton, Kelly](#)'; '[Yackulic, Ted](#)'; 'tyackulic@gmail.com'; Frederick.Phillips@USDOJ.GOV

Cc: [Justin D. Leonard \(jleonard@ml-llp.com\)](mailto:Justin D. Leonard (jleonard@ml-llp.com))

Subject: RE: Escrow Agreement

All, attached is a fully-executed copy of the Escrow Agreement.

Ted, please send the lien release at your earliest opportunity.

Thanks,
Stephen

From: Norton, Kelly [<mailto:Kelly.Norton@ctt.com>]

Sent: Friday, January 31, 2014 5:06 PM

To: Feldman, Stephen (Perkins Coie); 'Yackulic, Ted'

Cc: Frederick.Phillips@USDOJ.GOV; Justin D. Leonard (jleonard@ml-llp.com)

Subject: RE: Escrow Agreement

Stephen please see attached with my signature and the original is on its way to you for delivery on Monday. Thanks again~

Kelly M. Norton
Senior Escrow Officer/Commercial Division
Chicago Title Company
1211 SW Fifth Avenue, Suite 2130
Portland, OR 97204
Direct: 503-973-7402
Toll Free: 866-847-7400
Fax: 503-248-0324
Kelly.Norton@CTT.COM

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Friday, January 31, 2014 4:41 PM
To: 'Yackulic, Ted'; Norton, Kelly
Cc: Frederick.Phillips@USDOJ.GOV; Justin D. Leonard (jleonard@ml-llp.com)
Subject: RE: Escrow Agreement

FYI, I will have all of the Seller signatures within the next hour or so.

Kelly, Please advise as to Chicago Title's signature. Thanks.

From: Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]
Sent: Friday, January 31, 2014 3:59 PM
To: Feldman, Stephen (Perkins Coie); Kelly.Norton@CTT.COM
Cc: Frederick.Phillips@USDOJ.GOV; Justin D. Leonard (jleonard@ml-llp.com)
Subject: RE: Escrow Agreement

Kelly and Steve,

Attached is an EPA signed copy of the escrow agreement. I'll send a scanned version of the lien release form after I receive a copy of the executed escrow agreement.

Ted Yackulic, Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Phone: 206-553-1218
yackulic.ted@epa.gov

From: Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]
Sent: Friday, January 31, 2014 2:37 PM
To: Kelly.Norton@CTT.COM; Yackulic, Ted
Cc: Frederick.Phillips@USDOJ.GOV; Justin D. Leonard (jleonard@ml-llp.com)
Subject: Escrow Agreement

Kelly and Ted,

Attached is an execution copy of the Escrow Agreement.

Please have an authorized representative of Chicago Title and EPA, respectively, sign the Agreement, and please then return to me the executed signature page. Once all the parties and EPA have signed, I will put together a fully-executed copy of the Agreement and circulate it.

Thanks everyone for your cooperation and effort in getting this done.

Best,
Stephen
Stephen M. Feldman | **Perkins Coie LLP**
1120 N.W. Couch Street
Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2058
FAX: 503.346.2058
E-MAIL: sfeldman@perkinscoie.com



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